

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL ROBERT KAMISCHKE,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED

December 17, 2002OS

No. 233010

Court of Claims

LC No. 99-017390-CM

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 5, 1997, plaintiff was injured when the car he was driving collided with a van at the intersection of Reid Road and Dort Highway (M-54). He pulled his car into the path of the van that was hidden from his view by a turning semi-trailer truck. Plaintiff filed suit alleging that M-54 at or near the intersection with Reid Road was not reasonably safe for public travel, that the turn radius at the intersection was insufficient and constituted a dangerous condition directly in the improved portion of the roadway, and that defendant negligently failed to provide warning signs advising motorists that large vehicles would be turning onto Reid Road from M-54.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that plaintiff's claim of a design defect did not fall within the applicable highway exception to governmental immunity. The trial court granted the motion, finding that plaintiff's claim regarding the adequacy of the width of the intersection and turn radius was a design defect claim, and therefore was not within the immunity exception.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. There are several narrowly drawn exceptions to governmental immunity, including the highway exception. This exception requires a governmental agency having jurisdiction over a highway to "maintain the highway in

reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). MCL 691.1402(1) imposes duties and liability on state and county road commissions only for the improved portion of the highway.

The scope of the highway exception to governmental immunity has been the subject of several recent decisions by our Supreme Court. In *Pick v Szymczak*, 451 Mich 607; 548 NW2d 603 (1996), our Supreme Court held that the duty to maintain a highway in reasonable repair included the duty to erect warning signs or traffic control devices at a “point of hazard” or a “point of special danger.” A “point of hazard” or a “point of special danger” was deemed to be a condition that directly affected vehicular travel on the improved portion of the roadway so that travel was not reasonably safe. *Id.*, 621. *Pick* was overruled in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 176-177, 180; 615 NW2d 702 (2000), in which our Supreme Court held that the highway exception did not contemplate conditions arising from points of hazard or special danger outside the actual roadbed designed for vehicular travel. The *Nawrocki* Court held that state and county road commissions have no duty under the highway exception to install, repair, maintain, or improve traffic control devices, including signs and lighting. *Id.*, 179-184. Defective design claims were not specifically presented in *Nawrocki*. However, the *Nawrocki* Court acknowledged that such claims were often raised under MCL 691.1402(1), and implicitly indicated that defective design claims be excluded from the highway exception. *Id.*, 179-181. In *Hanson v Mecosta Co Rd Comm’s*, 465 Mich 492, 502-504; 638 NW2d 396 (2002), our Supreme Court held that the state and county road commissions have no duty under the highway exception to improve upon the design of or to correct defects arising from the original design of a roadway.

In *Adams v Dep’t of Transportation*, ___ Mich App ___; ___ NW2d ___ (Docket No. 230268, issued October 11, 2002), lv pending ___ Mich ___ (Docket No. 122649), a special panel of this Court resolved the conflict between a prior decision in *Adams v Dep’t of Transportation*, ___ Mich App ___; ___ NW2d ___ (Docket No. 230268, issued June 7, 2002), vacated 251 Mich App 801; 651 NW2d 88 (2002), and our earlier decision in *Sekulov v City of Warren*, 251 Mich App 333; 650 NW2d 397 (2002), and held that *Nawrocki* must be given full retroactive effect. The *Adams* Court held that in overruling *Pick*, *Nawrocki* did not overrule clear and uncontradicted case law in order to establish a new legal principle, but rather properly interpreted the highway exception to governmental immunity. *Adams, supra*, slip op at 5.

Pursuant to *Adams, supra*, we affirm the trial court’s order granting defendant’s motion for summary disposition. Plaintiff’s complaint alleged that a special point of danger existed on the intersection and that the design of the intersection, in particular the turn radius, was defective. Plaintiff’s claims of inadequate signage and traffic control devices as well as defective design fail to plead facts in avoidance of governmental immunity under *Nawrocki* and *Hanson*. Summary disposition was properly granted.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh